

COMSCINST 4255.2C	COG CODE N10	DATE 23 MAR 1998
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DEPARTMENT OF THE NAVY
 COMMANDER MILITARY SEALIFT COMMAND
 WASHINGTON NAVY YARD
 914 CHARLES MORRIS COURT SE
 WASHINGTON DC 20398-5540

COMSCINST 4255.2C
 N10
 23 March 1998

COMSC INSTRUCTION 4255.2C

Subj: CONTRACTING WITH LESS THAN FULL AND OPEN COMPETITION

Ref: (a) 10 U.S.C. 2304
 (b) FAR 6.001
 (c) FAR 6.3
 (d) DFARS 206.3
 (e) NAPS 5206.3
 (f) FAR 13.501(a)
 (g) SECNAVINST 4210.10
 (h) FAR 6.5

Encl: (1) Justification and Approval (J&A) Format
 (2) Military Sealift Command Competition Advocates

1. Purpose. To establish policy and procedures, and assign responsibilities within Military Sealift Command (MSC) for processing justification and approvals required by the FAR to ensure compliance with reference (a). This is a complete revision and should be read in its entirety.

2. Cancellation. COMSCINST 4255.2B.

3. Scope. This instruction applies to all MSC procurement actions except those specifically excluded by reference (b).

4. Background. Reference (a) requires a detailed, written justification for any contracting action not using full and open competition in accordance with references (c), (d) and (e). Justifications for sole source acquisitions under the authority of the test program for commercial items (FAR Subpart 13.5) shall be prepared in accordance with reference (f). Offices initiating contract requirements are responsible for providing the data necessary to justify contracting under conditions other than full and open competition.

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5. Policy

a. Contracting without providing for full and open competition is not justified due to lack of planning or the imminent expiration of appropriated funds. Each justification and approval (J&A) must be a stand-alone document and include sufficient detail to explain the circumstances without the need to refer to the contract file. If the J&A includes options, those options must be adequately supported based on the statutory authority cited in the J&A. In such a case, exercising an option does not require a separate J&A.

b. FAR 6.302 lists the statutory authorities permitting procurement without full and open competition. Unless the justification is based on unusual and compelling urgency, a J&A must be executed prior to negotiation for a procurement which provides for other than full and open competition. Justifications may be made on an individual or class basis except for contracts awarded under the public interest exception.

c. A class J&A is approved in the same manner as individual J&As. When using a class J&A for a specific contract action, the Contracting Officer must document the file affirming the applicability of the class J&A to the specific contract action and include a duplicate copy of the approved, signed class J&A in the contract file.

d. The cumulative dollar value of all actions contemplated will comprise the approval threshold amount (e.g., firm period of performance plus all options). If the dollar value of the proposed contract increases significantly after the approval of the J&A, an amended or new J&A is required prior to award. The approval authority will be based on the increased value. The approval level for an amendment shall be established by adding or subtracting the dollar value of the amendment to the basic J&A.

e. A J&A shall be amended and the required approval obtained if any of the following circumstances occur:

(1) The contract action dollar value increases to the extent it exceeds the previous approving official's authority;

(2) A significant change in the scope of the work or quantity occurs;

(3) A change in the Government's acquisition strategy reduces or eliminates competition; or

(4) A change in the Government's requirement affects the basis of the justification.

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f. The Contracting Officer, with information provided by the requiring office, must prepare a written J&A on letterhead, certify the accuracy and completeness of the justification and obtain the necessary approval signatures.

(1) A J&A shall follow the format set forth in enclosure (1). A J&A will have a number which is associated with the procurement request or solicitation. The numbering convention is the same as that for acquisition plans, determination and findings (D&Fs) and business clearance memorandums.

(2) An "Amendment to Justification and Approval For Other Than Full and Open Competition" shall be prepared using the same paragraphs as the basic J&A. It will be numbered sequentially with a number which is associated with the procurement request or solicitation. Depending upon the extent of the changes, an amendment may be submitted addressing only those paragraphs being revised or as a completely revised J&A. If the amendment is not a complete revision, paragraphs 1, 2 and 3 from the original J&A will be repeated for reference, the paragraphs being revised will be addressed, and paragraph 9 will explain the need for the amendment. A copy of the basic J&A along with the amendment will be forwarded to the approval authority.

6. Action

a. Requiring Office. FAR 6.303-1(b) requires offices having technical cognizance over contract requirements and offices initiating contract requirements to provide the Contracting Officer with the information needed to complete the justification and approval and to certify that the information is complete and accurate. The head of the requiring office must sign the J&A or the Contracting Officer may include a statement that any technical information used to form the basis for the J&A was certified by the cognizant requirements personnel. For J&A amendments, technical and requirements certifications are only needed when something in those respective areas has changed.

b. Legal Counsel. NAPS 5206.303-90 requires legal review of J&As prior to submission to the approving official. Amendments require legal review.

c. Contracting Officer. After receiving the necessary information from the requiring office, the Contracting Officer will prepare the justification. The Contracting Officer shall sign the J&A/amendment below his certification, obtain the signature of the head of the requiring office or certification as indicated in paragraph 6a above, secure the required legal review and forward the document to the appropriate approving official as indicated in paragraph 6e below. If the Contracting Officer is the approving official as indicated in paragraph 6e(2) below, the Contracting Officer shall also perform the duties of the competition advocate as described in paragraph 6d(2) below.

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d. Competition Advocate

(1) Appointments. In accordance with references (g) and (h), competition advocates for MSC are identified in enclosure (2).

(2) Duties

(a) Promote the competition advocacy program at MSC.

(b) Participate in procurement planning and work with the requiring office to enhance competition.

(c) Review noncompetitive procurements and challenge barriers to full and open competition. This includes challenging unnecessarily detailed specifications or overly restrictive statements of need.

(d) Act as approving official for the written J&As for contract actions expected to be awarded using other than full and open competition procedures in accordance with the approval thresholds in paragraph 6e below.

e. Review and Approval

(1) The introductory paragraph for J&As should include the position/title of the person approving the J&A, i.e., Contracting Officer, Competition Advocate, Assistant Deputy Commander for Business Operations or Navy Senior Procurement Executive.

(2) The approving official is determined by the total dollar value of the procurement. For J&As exceeding \$500,000, the Competition Advocate and the Contracting Officer shall not be the same individual.

≤ \$500,000	Contracting Officer (within the individual's warrant limitations)
≤ \$1 million	Directors of Contracting Offices, Far East (FE N10) and Europe (EUR N10). For J&As exceeding \$1 million, FE and EUR will forward those J&As to Policy and Program Support (N101) and request approval from N101 or N10/N10X depending on the total estimated value of the J&A.
≤ \$3 million	Division Directors within the Contracts & Business Management Directorate, Policy and Program Support (N101), Contracting Support (N102), Contracts East (N10E) and Contracts West (N10W). J&As exceeding \$3 million shall be forwarded via N101 to the approving official.

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≤ \$10 million	Director or Deputy Director, Contracts & Business Management Directorate (N10/N10X)
≤ \$50 million	Assistant Deputy Commander for Business Operations, Military Sealift Command (N03)
over \$50 million	Navy Senior Procurement Executive, ASN Research, Development and Acquisition (RD&A). J&A will be transmitted via ASN (RD&A) Acquisition & Business Management.

Distribution:

COMSCINST 5000.19

List I (Case A, B, C)

SNDL 41B (MSC Area Commands)
 41D3 (MSC Offices)

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**JUSTIFICATION AND APPROVAL (J&A)
FOR OTHER THAN FULL AND OPEN COMPETITION**

Upon the basis of the following justification, I, as * TITLE , hereby approve the use of other than full and open competition for the proposed contractual action(s) pursuant to the authority cited herein:

1. Contracting Activity:
2. Nature of the Action: *(e.g., contract, modification, delivery order)*
3. Description of the Supplies/Services: *(include the estimated value, including options)*
4. Statutory Authority: 10 U.S.C. 2304(c)(_) implemented at FAR 6.302-(_), (title of exception).
(Complete with (1) through (7) per FAR 6.302)
5. Rationale Supporting Use of the Authority:
6. Description of Efforts Made to Solicit Offers from as Many Potential Sources as Practicable:
(Synopsis in CBD, or if not, why not)
7. Basis of Contracting Officer's Fair and Reasonable Price/Cost Determination:
8. Description of Market Research Conducted: *(if not conducted, why not)*
9. Other Facts Supporting Use of Other Than Full and Open Competition: *(e.g. undeveloped/unavailable technical package; duplication of cost for follow-on procurement; if urgent, cost and nature of the harm to the government from delay in award)*
10. List of Sources that Expressed Interest in Writing:
11. Action Planned to Remove or Overcome Any Barriers to Competition Prior to Subsequent Acquisitions: *(If no action is planned, explain why)*
12. Delivery Requirement: *(e.g., include a list of ships and/or shore activities and required delivery dates)*
13. Total Estimated Dollar Value: *(identified by fiscal year and appropriation) (may be included as part of item 3)*
14. Acquisition Plan Supporting this Acquisition: AP No. _____ was approved _____.
(Copy attached if procurement exceeds \$50 million, updated if necessary) (Not applicable, if no AP)
15. Issues relating to contractor performance:
16. Congressional Interest: *(i.e., specific law, report language or known Congressional interest)*

Enclosure (1)

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TECHNICAL AND REQUIREMENTS CERTIFICATION

I certify that the facts and representations under my cognizance which are included in this justification and its supporting Acquisition Plan No. _____ and which form a basis for this justification are complete and accurate.

Technical Cognizance

(Signature) _____
Date Code Phone

Requirements Cognizance

(Signature) _____
Date Code Phone

CONTRACTING OFFICER CERTIFICATION REQUIRED BY FAR 6.303-2(a)(12)

I certify that this justification, including its supporting Acquisition Plan No. _____, is accurate and complete to the best of my knowledge and belief.

(Signature) _____
Date Code Phone

LEGAL REVIEW REQUIRED BY NAPS 5206.303-90

I have reviewed this justification and it is deemed to be legally sufficient.

(Signature) _____
Date Code Phone

APPROVED:

(Signature) _____
Date Code Phone

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MILITARY SEALIFT COMMAND COMPETITION ADVOCATES

Assistant Deputy Commander for Business Operations (N03) Military Sealift Command Washington Navy Yard 914 Charles Morris Court SE Washington DC 20398-5540	(202) 685-5011 DSN: 325-5011 FAX: (202) 685-5020
Director or Deputy Director (N10/N10X) Contracts & Business Management Military Sealift Command Washington Navy Yard 914 Charles Morris Court SE Washington DC 20398-5540	(202) 685-5570 DSN: 325-5570 FAX: (202) 685-5579
Director (N101) Policy and Program Support Division Military Sealift Command Washington Navy Yard 914 Charles Morris Court SE Washington DC 20398-5540	(202) 685-5930 DSN: 325-5930 FAX: (202) 685-5942
Director (N102) Contracting Support Division Military Sealift Command Washington Navy Yard 914 Charles Morris Court SE Washington DC 20398-5540	(202) 685-5964 DSN: 325-5964 FAX: (202) 685-5965
Director (N10E) Contracts East Military Sealift Command Camp Pendleton Bldg. 238 Virginia Beach, VA 23458	(757) 417-4600 DSN: 537-4600 FAX: (757) 417-4606
Director (N10W) Contracts West Military Sealift Command Pacific 280 Anchorway Suite 1 West Oakland CA 94625-5010	(510) 302-6294 DSN: 672-6294 FAX: (510) 302-6360
Director (FE N10) Military Sealift Command Far East PSC 471 FPO AP 96347-2600 (Yokohama, JA)	81-311-769-6649 DSN: 269-6649 FAX: 81-311-769-0628
Director (EUR N10) Military Sealift Command Europe PSC 817 Box 23 FPO AE 09622-0023 (Naples, IT)	39-81-568-4141 DSN: 314-626-4141 FAX: 39-81-568-3570

Enclosure (2)